IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

**CRP.No. 1039 of 2005**

AGAINST THE ORDER DATED 10.10.2005 IN I.A.NO.338/05 AND IA.NO.339/05 IN OS.NO.92/01 ON THE FILE OF THE COURT OF MUNSIFF OF TIRUR.

REVN. PETITIONER: PLAINTIFF:
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SUBHADRA WARASYAR K.V.,
W/O. SOMASUNDARAN, `AISWARYA', TEMPLE ROAD,
KADAMPUZHA, MALAPPURAM DISTRICT.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS: DEFENDANTS:
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1. KERALA STATE CIVIL SUPPLIES CORPORATION LTD., REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR, P.B.NO.2030, MAVELI ROAD, GANDHINAGAR.

2. ASSISTANT MANAGER, KERALA STATE CIVIL SUPPLIES CORPORATION LTD., TIRUR, MALAPPURAM DISTRICT.

3. MARAKKARA GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY, POST KADAMPUZHA, MALAPPURAM DISTRICT.

BY ADV. SRI.JOY GEORGE, SC, SUPPLYCO
SMT.MOLLY JACOB,SC,SUPPLYCO

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**I.A.NO.2462/2005 IN C.R.P.NO.1039/2005**

DISMISSED

6.7.2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

ahz/

**K.T. SANKARAN, J.**

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**C.R.P. NO. 1039 OF 2005 E**

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**Dated this the 6th day of July, 2007**

**O R D E R**

The plaintiff in O.S.No.92 of 2001, Munsiff's Court, Tirur, is the revision petitioner. She challenges the orders in I.A.No.338 of 2005 and I.A.No.339 of 2005, by which the court below allowed the application for setting aside the exparte decree against defendants 1 and 2 after condoning the delay.

2. The suit was listed for trial on 6.10.2004. On that date, defendants 1 and 2 did not appear and they were set exparte. An exparte decree was passed on 30.10.2004. On 5.2.2005, defendants 1 and 2 filed I.A.No. 339 of 2005 under Order IX Rule 13 of the Code of Civil Procedure to set aside the exparte decree. I.A.No.338 of 2005 was filed to condone the delay in filing I.A.No.339 of 2005.

3. The applications were posted to various dates. The proceedings would indicate that on 7.4.2005, counter was filed in the applications and the applications were posted for enquiry on 17.6.2005. Thereafter, the case was adjourned on two occasions. On 17.8.2005, the court below passed an order in I.A.No.338 of 2005, which reads thus:

> "No counter filed. No representation also. Hence the petition allowed."

On the same date, in I.A.No.339 of 2005, the court below passed the following order:

> "No counter filed. No representation also petitioner respondent. Heard, the counsel for the petitioner.
>
> In the result, petition allowed. The exparte order passed against the petitioner set aside and suit restored on file."

4. When the court below recorded on 7.4.2005 that counter was filed, it may not be correct as recorded on 17.8.2005 that no counter was filed. Learned counsel for the revision petitioner produced before me for perusal copies of the counter statements filed in I.A.Nos.338 and 339 of 2005. It is contended therein that as against the third defendant there was a full-fledged trial and the suit was decreed thereafter. The revision petitioner contends that a decree which is passed in such a manner cannot be set aside by recourse to Order IX Rule 13 of the Code of Civil Procedure. I am not arriving at any conclusion on the basis of these contentions since the court below has not stated anything in the order on the merits of the contentions put forwarded by the parties. Since the court below has proceeded on the basis that no counter was filed and since it is now seen that counter has been filed as recorded by the court below on 7.4.2005, I am inclined to direct the court below to consider the applications afresh. The court below has not rendered any finding whether defendants

1 and 2 were prevented by sufficient cause from appearing in court on the date on which the suit was posted for trial. The court below has not found whether the case put forward by defendants 1 and 2 in the application is correct or not. There was no proper disposal of I.A.Nos.338 and 339 of 2005. Therefore, the impugned orders are set aside. The court below shall dispose of I.A.Nos.338 and 339 of 2005 afresh in accordance with law, as expeditiously as possible.

The Civil Revision Petition is disposed of as above.

**(K.T.SANKARAN)**
**Judge**

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